

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Susan Mezzetti,

NO. C 04-3022 JW

Plaintiff(s),

v.

**ORDER GRANTING STATE FARM'S
MOTION FOR SUMMARY JUDGMENT**

State Farm Mutual Automobile Insurance
Company,

Defendant(s).

I. INTRODUCTION

In May of 1995, Plaintiff Susan Mezzetti ("Mezzetti") and her passengers were injured in an automobile accident allegedly caused by a high speed chase. Mezzetti's vehicle was insured through Defendant State Farm Mutual Automobile Insurance Company ("State Farm"). Nancy Clewett ("Clewett") was the registered owner of the two vehicles engaged in the alleged high speed chase, a Toyota Camry and a Toyota pick-up truck. The truck made impact with Mezzetti's vehicle. Mezzetti filed a claim with State Farm under Clewett's putative State Farm policy. State Farm denied Mezzetti's claim on the basis that Clewett did not have a State Farm policy covering the truck. In doing so, State Farm allegedly falsely represented that Clewett had no insurance coverage for any portion of the accident, while knowing that Clewett had insurance coverage on the Camry. Mezzetti's First Amended Complaint asserts, inter alia, a number of claims rooted in

misrepresentation.¹

State Farm moves for summary judgment, or in the alternative partial summary judgment. State Farm contends, among other things, that the claims are barred by the applicable statutes of limitations. On November 14, 2005, this Court held a hearing regarding State Farm's motion. Based upon all papers filed to date and the comments of counsel, this Court grants State Farm's motion.

II. BACKGROUND

Clewett originally had a written policy of automobile insurance with State Farm for her Toyota pick-up truck. She later purchased a new vehicle, a Toyota Camry, and accordingly in January of 1995, Clewett replaced the truck with her Camry on the State Farm policy.² Also in January of 1995, Clewett sold the truck to her boyfriend; however, she remained the registered owner of both vehicles. Howard apparently did not purchase any automobile insurance for the truck.

On May 5, 1995, Clewett was in her Camry following her boyfriend, Howard, who was driving in the truck, when Howard struck a vehicle operated by Mezzetti near the corner of N. Monroe Street and Cory Avenue in San Jose, California. At the time, Mezzetti, who was seven months pregnant, was transporting her three minor children and another minor child. The police report concluded that Howard caused the accident by driving at an extremely excessive speed and trying to overtake Mezzetti's vehicle. The police report did not identify any other persons as potentially at fault for the accident. The police report included a witness statement by Clewett, however, indicating that she "rushed [Howard] out of the shower so they could get to Jiffy Lube before 5:00 p.m. (1700 hrs) to get [the truck] a smog check," and that "they were in a hurry." Decl. of Matthew J. Curley, Ex. 2.

After reading the police report, Mezzetti's attorney "immediately determined that Clewett

¹ Jurisdiction here is based upon removal, 28 U.S.C. § 1441(a), and diversity of citizenship, 28 U.S.C. § 1332(a)(1).

² When Clewett replaced her truck with the Camry on the insurance policy, State Farm automatically continued insurance coverage on the truck for the next thirty-days pursuant to State Farm's policy regarding "replaced" vehicles.

1 and Howard had engaged in a high speed chase and therefore Clewett was partially at fault in the
2 accident.” Decl. of Robert Mezzetti II, p.2.

3 Mezzetti’s attorney sent Clewett a letter dated May 19, 1995 asserting a claim against her for
4 the accident. The letter stated, in pertinent part:

5 Our investigation reveals you are the registered owner of the vehicle which Mr.
6 Howard was driving and that you are partially at fault in the accident. Please provide
7 us . . . with the name of your insurance company, the policy number, and the policy
limits on the 1993 Toyota pick-up which Mr. Howard was driving at the time of the
accident.

8 Decl. of Matthew J. Curly, Ex. 3. In mid to late May, Mezzetti’s attorney spoke to Howard, who
9 informed him that:

10 Nancy Clewett would become upset with him when he accused her of lying about a
11 bank robbery at Security Pacific and that when he was in the shower on the day of the
12 accident they argued over the bank robbery issue. Clewett threatened Howard and
13 chased him from the shower. Howard jumped out of the shower and with only a
towel on ran to the pick-up and sped away. Clewett gave chase in her Camry. They
proceeded down Naglee towards Monroe. Clewett was two feet behind Howard
when they got to Monroe.

14 Decl. of Robert Mezzetti II, pp. 3-4. On May 22, 1995, Mezzetti’s attorney spoke to State Farm
15 Claims Representative Danielle Spier (“Spier”) regarding the accident. Id. at p.4. The notes of the
16 conversation retained by Mezzetti’s attorney indicate that they discussed a number of issues. In
17 pertinent part, the notes reflect that there was a “coverage issue”; that in January Clewett bought a
18 new car and gave notice that she was replacing the truck; that in March, Clewett sent a letter
19 cancelling the insurance on the truck; and that on May 8, 1995, State Farm received a letter and
20 check dated May 1, 1995, asking that State Farm reinstate coverage on the truck because she was
21 going to be driving it. Decl. of Stephen Ellingson, Ex. 25. The notes also reflect that Mezzetti’s
22 attorney told Spier the substance of his conversation with Howard. Id.

23 State Farm investigated whether Clewett’s policy was in force on the truck, and concluded
24 there was none. State Farm so informed Clewett in a letter dated June 21, 1995. State Farm
25 similarly advised Mezzetti in a letter dated June 30, 1995. This letter lies at the crux of this lawsuit.
26 In its entirety, the letter's body reads as follows:

1 We have completed our investigation on the question of coverage surrounding the
2 above-captioned loss.

3 Based on our investigation, there was no State Farm policy in force on the vehicle
4 involved on the above date of loss. Therefore, there is no coverage under this State
5 Farm policy.

6 If you have any questions, please feel free to contact me.

7 Curley Decl., Ex. 5. Mezzetti claims that, by this letter, State Farm fraudulently denied the existence
8 of a State Farm policy which covered any portion of the accident. Significantly, it is undisputed that
9 there was no State Farm policy to cover the truck involved in the accident. Nevertheless, Mezzetti
10 construes the letter as a denial of any State Farm policy to cover the Camry allegedly involved in the
11 high speed chase.

12 In alleged reliance upon these representations, Mezzetti sought compensation elsewhere:
13 under her own State Farm Uninsured Motorist ("UM") policy. Mezzetti and State Farm agreed to a
14 \$100,000 settlement, the maximum amount under Mezzetti's UM policy.

15 Approximately one year after the accident, Mezzetti filed suit against Clewett and Howard
16 (hereinafter "Mezzetti I lawsuit"). The complaint alleged that Clewett and Howard were involved in
17 a "high speed chase" on a residential street and caused the accident. Request for Judicial Notice, Ex.
18 17.³ Pursuant to the terms of her State Farm policy, Clewett was required to notify State Farm that
19 this complaint had been filed. Clewett failed to provide the required notice, and State Farm did not
20 discover the Mezzetti I lawsuit had been filed until April 2002. On October 15, 1999, Mezzetti
21 obtained default judgment against Clewett in the sum of \$643,382. The time to appeal the default
22 judgment expired 180 days later, on April 12, 2000.

23 Mezzetti's son, a minor at the time of the accident, filed a second lawsuit against Clewett in
24 April 2002, after reaching the age of majority (hereinafter "Mezzetti II lawsuit"). The complaint
25 included the allegation of a "high speed chase." Request for Judicial Notice, Ex. 24. This time,
26 Clewett timely tendered the Mezzetti II lawsuit to State Farm, and State Farm accepted her defense

27 ³ State Farm's Request for Judicial Notice is granted.

1 under a reservation of rights. The status of the Mezzetti II lawsuit is unknown.

2 On June 16, 2004, Mezzetti filed the instant lawsuit against State Farm in Santa Clara
3 County Superior Court. State Farm removed the lawsuit pursuant to 28 U.S.C § 1441(a). Mezzetti's
4 First Amended Complaint alleges five state law causes of action: (1) Collection/Satisfaction of
5 Judgment Under Section 11580 of the California Insurance Code, (2) Declaratory Relief, (3) Fraud--
6 False Representation, (4) Constructive Fraud--Section 1573 of the California Civil Code, and (5)
7 Negligent Misrepresentation. Mezzetti prays for, inter alia, "the sum of \$200,000[,] . . . general
8 damages in the amount of \$500,000 for mental suffering and emotional distress[, and] punitive
9 damages." (First Amended Complaint at 8.)

10 State Farm now moves for summary judgment on numerous grounds. State Farm contends
11 that Mezzetti cannot prevail on the first claim because (1) it is barred by the four-year statute of
12 limitations; and (2) Clewett failed to provide State Farm with timely notice of the Mezzetti I lawsuit.
13 State Farm contends that the first and second claim fail because Mezzetti assigned to State Farm any
14 and all right to recover any proceeds paid by or on behalf of a tortfeasor who caused Mezzetti's
15 injuries. State Farm contends that the third, fourth, and fifth claims fail because (1) they are barred
16 by the three-year statute of limitations; (2) they are barred by the litigation privilege; (3) State Farm
17 made no actionable misrepresentations; and (4) Mezzetti did not justifiably rely on any purported
18 misrepresentations. Further, State Farm contends that the fourth claim fails because Mezzetti did not
19 have a confidential or fiduciary relationship with State Farm. Lastly, State Farm contends that the
20 claim for punitive damages fails because there is no clear and convincing evidence of malice, fraud,
21 or oppression.

22 III. STANDARDS

23 Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and
24 admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
25 material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P.
26 56(c). The purpose of summary judgment "is to isolate and dispose of factually unsupported claims
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28

1 or defenses." Celotex v. Catrett, 477 U.S. 317, 323-324 (1986).

2 The moving party "always bears the initial responsibility of informing the district court of the
3 basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to
4 interrogatories, and admissions on file, together with the affidavits, if any' which it believes
5 demonstrate the absence of a genuine issue of material fact." Id. at 323. If the moving party meets
6 this burden, that party is then entitled to judgment as a matter of law when the non-moving party
7 fails to make a sufficient showing on an essential element of his case with respect to which he bears
8 the burden of proof at trial. Id. at 322-23.

9 The non-moving party "must set forth specific facts showing that there is a genuine issue for
10 trial." Fed. R. Civ. P. 56(e). The non-moving party cannot defeat the moving party's properly
11 supported motion for summary judgment simply by alleging some factual dispute between the
12 parties. To preclude the entry of summary judgment, the non-moving party must bring forth
13 material facts, i.e., "facts that might affect the outcome of the suit under the governing law . . .
14 Factual disputes that are irrelevant or unnecessary will not be counted." Anderson v. Liberty Lobby,
15 Inc., 477 U.S. 242, 247-48 (1986). The opposing party "must do more than simply show that there is
16 some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio, 475
17 U.S. 574, 586 (1986).

18 The court must draw all reasonable inferences in favor of the non-moving party, including
19 questions of credibility and of the weight to be accorded particular evidence. Masson v. New
20 Yorker Magazine, Inc., 501 U.S. 496, 520 (1991) (citing Anderson, 477 U.S. at 255); Matsushita,
21 475 U.S. at 588; T.W. Elec. Serv. v. Pac. Elec. Contractors, 809 F.2d 626, 630 (9th Cir. 1987). It is
22 the court's responsibility "to determine whether the 'specific facts' set forth by the nonmoving party,
23 coupled with undisputed background or contextual facts, are such that a rational or reasonable jury
24 might return a verdict in its favor based on that evidence." T.W. Elec. Serv., 809 F.2d at 631.
25 "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is if the
26 evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson,

477 U.S. at 248. However, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita, 475 U.S. at 587.

IV. DISCUSSION

A. State Farm is Entitled to Summary Judgment on the First Claim for Collection/Satisfaction of Judgment

Mezzetti's first claim is brought under California Insurance Code §11580 to recover Clewett's policy limits from State Farm. State Farm contends it is entitled to summary judgment on the claim because (1) the claim is untimely and (2) barred due to Clewett's failure to tender the Mezzetti I lawsuit. Both defenses warrant summary judgment in State Farm's favor for the reasons set forth below.⁴

1. The Statute of Limitations Bars The First Claim

State Farm contends the first claim is barred by the applicable statute of limitations. The statute of limitations for a judgment creditor claim predicated on Insurance Code §11580 is four years. California Code of Civil Procedure §337. The statute of limitations commences upon the entry of final judgment against the insured. Hand v. Farmers Insurance Exchange, 23 Cal.App.4th 1847, 1857 (1994); Woolett v. American Employers Ins. Co., 77 Cal.App.3d 619, 624 (1978).

In the instant case, it is undisputed that default judgment against Clewett was entered on October 15, 1999, and became final when the time to appeal expired 180 days later on April 12, 2000. Mezzetti brought her §11580 claim on June 16, 2004, nearly two months after the expiration of the four year statute of limitations. Accordingly, the claim is untimely. Nevertheless, Mezzetti contends that State Farm should be equitably estopped from asserting the statute of limitations as a defense because State Farm allegedly misrepresented that "there was no State Farm policy in force." Opposition, p.7.

⁴ In total, State Farm has asserted three separate and independent defenses to the first claim. Because two of the three defenses clearly apply, the Court finds it unnecessary to address State Farm's third defense to the claim based upon an assignment theory.

Under California law, an insurer may be estopped from asserting the statute of limitations as a defense if the insurer misrepresents a fact, and the insured reasonably relies upon the fact and refrains from filing suit. Vu v. Prudential Property & Casualty Insurance Co., 26 Cal.4th 1142 1151-1153 (2001). In contrast, however, a denial of coverage, even if phrased as a “representation” that the policy does not cover the insured’s claim does not provide a basis for estoppel. Id. at 1152.

In the present case, State Farm did not misrepresent any facts. The police report establishes that the “vehicle involved” in the accident was the truck driven by Clewett’s boyfriend. State Farm similarly considered the “vehicle involved” as the truck driven by Clewett’s boyfriend. Mezzetti has not presented any evidence to prove otherwise. Construing the evidence in a light most favorable to Mezzetti, the evidence suggests, at most, that Mezzetti believed there was more than one vehicle involved in the accident based upon his conversation with Howard, and that he conveyed his belief to State Farm. There is no evidence, however, that State Farm shared Mezzetti’s belief. Rather, the evidence shows that State Farm investigated insurance coverage for the truck, which is consistent with State Farm’s reference to “vehicle” in the singular in its June 30, 1995 letter.

The estoppel theory also fails because Mezzetti could not have reasonably relied upon the alleged misrepresentation. The undisputed evidence establishes that at the time Mezzetti received the letter, Mezzetti knew Clewett had a policy on her Camry; knew the Camry was potentially involved in the accident because Clewett and Howard had allegedly engaged in a “high speed chase”; and knew there was a coverage question regarding the truck

Furthermore, to the extent the letter made any representation at all, it was a denial of coverage, and therefore provides no basis for estoppel as a matter of law. Vu, supra. Accordingly, Mezzetti’s estoppel theory fails.

2. Clewett’s Failure to Tender the Mezzetti I Lawsuit Also Bars The First Claim

As a third party judgment creditor against Clewett, Mezzetti is subject to the terms and conditions of Clewett’s policy. California Code of Civil Procedure §11580(b)(2). This includes the defense that the insured breached the cooperation clause. Hall v. Travelers Ins. Cos., 15 Cal.App.3d

304, 308 (1971). Thus, where the insured fails to notify the insurer of a suit and the insurer suffers substantial prejudice, the insurer may assert the notice-prejudice rule as a defense to a §11580 claim. Id.; Campbell v. Allstate Ins. Co., 60 Cal.2d 303, 306 (1963).

It is undisputed that Clewett's State Farm policy required her to send a copy of the Mezzetti I complaint to State Farm. It is further undisputed that Clewett failed to give State Farm notice of the Mezzetti I lawsuit, and that failure to give notice prejudiced State Farm.

Mezzetti contends, however, that Clewett's duty to tender was discharged by State Farm's denial of coverage. As discussed previously, however, State Farm did not deny coverage to Clewett for her alleged participation in a high speed chase while driving her own Camry. As such, caselaw excusing an insured's duty to cooperate and give notice of a lawsuit does not apply. See e.g. Samson v. Transamerica Ins. Co., 30 Cal.3d 220 (1981). Accordingly, Mezzetti's first claim is barred by Clewett's failure to give notice of the Mezzetti I lawsuit.

B. State Farm is Entitled to Summary Judgment on the Fraud Claims

Mezzetti's third, fourth, and fifth claims are based upon State Farm's alleged fraud. State Farm contends the fraud claims must fail because they are untimely and lack evidentiary support. The Court finds merit in both contentions for the reasons set forth below.⁵

1. The Statute of Limitations Bar Plaintiff's Claims for Fraud

First, State Farm contends that the fraud claims are untimely. The statute of limitations for fraud or mistake is three years. California Code of Civil Procedure §338(d). The plaintiff has the burden of proof to invoke the "delayed discovery" rule to argue her ignorance delayed the accrual of her cause of action. Weir v. Snow, 210 Cal.App.2d 283, 292 (1962). In the context of the statute of limitations, "discovery" means when the plaintiff suspected or should have suspected that an injury was caused by defendant's wrongdoing. Jolly v. Eli Lilly & Co., 44 Cal.3d 1103, 1110-1111 (1988).

Mezzetti's fraud claims are based upon State Farm's June 30, 1995 letter in which State Farm

⁵ In total, State Farm has asserted three separate and independent defenses to the fraud claims. Because the Court finds that the fraud claims are time barred and lack evidentiary support, the Court finds it unnecessary to address State Farm's third defense based upon the litigation privilege.

1 stated that “there was no State Farm policy in force on the vehicle involved on the above date of
2 loss.” Mezzetti, however, did not file suit until June 16, 2004, well over three years later. Thus,
3 absent application of the “delayed discovery” rule, Mezzetti’s fraud claims are barred by the statute
4 of limitations.

5 Mezzetti contends that she did not discover the fraud until 2002, after the Mezzetti II lawsuit
6 was in progress. The undisputed evidence, however, establishes that Mezzetti should have
7 discovered the fraud upon receiving the June 30, 1995 letter, and therefore cannot avail herself of the
8 “delayed discovery” rule. Prior to receiving the letter, Mezzetti’s attorney discussed the accident
9 with Howard and had concluded that Clewett and Howard had been involved in a “high speed
10 chase.” Further, on May 22, 1995, Mezzetti’s attorney spoke to State Farm Claims Representative
11 Danielle Spier (“Spier”) regarding the accident. The notes of the conversation retained by
12 Mezzetti’s attorney indicate that they discussed a number of issues, including the fact that there was
13 a “coverage issue” regarding the truck because Clewett had replaced her truck on the State Farm
14 policy with her Camry. The notes also reflect that Mezzetti’s attorney told Spier the substance of his
15 conversations with Howard regarding the “high speed chase.” The conversations with Howard and
16 with Spier thus clearly put Mezzetti’s attorney on notice that Clewett’s Camry was insured with
17 State Farm, and that her Camry was potentially “involved” in the accident because of the “high
18 speed chase.” In light of these conversations, Mezzetti should have questioned the reference to only
19 one vehicle in the June 30, 1995 letter. Accordingly, the fraud claims are time barred.

20 **2. Mezzetti Cannot Establish the Elements of Fraud**

21 Second, State Farm contends that Mezzetti cannot establish the elements of fraud. To prevail
22 on a claim for fraud, a plaintiff must prove the following elements: (1) a misrepresentation of
23 material fact; (2) knowledge of falsity; (3) intent to induce reliance; (4) justifiable reliance; and (5)
24 resulting damage. Engalla v. Permanente Medical Group, Inc., 15 Cal.4th 951, 974 (1997).
25 Negligent misrepresentation requires a false representation by one who had no reasonable ground for
26 believing it was true. Fox v. Pollack, 181 Cal.App.3d 954, 962 (1986).

Mezzetti's fraud claim is based upon State Farm's representation that: "[b]ased on our investigation, there was no State Farm policy in force on the vehicle involved on the above date of loss. Therefore, there is no coverage under this State Farm policy." Curley Decl., Ex. 5. As discussed previously, the statement does not contain any misrepresentation. Furthermore, there is no evidence that State Farm knew the statement in its letter was false. Nor is there evidence of State Farm's intent to induce reliance. In addition, Mezzetti could not have reasonably relied upon the statement for reasons already discussed previously in Section A.1. to this Order. Therefore, the fraud claims fail for lack of proof.

V. CONCLUSION

Mezzetti's first claim is untimely, having been brought after the expiration of the statute of limitations. The first claim is also barred based upon Clewett's failure to give State Farm notice of the Mezzetti I lawsuit. Further all of Mezzetti's fraud claims fail because (1) they are untimely, having been brought after the expiration of the statute of limitations, and (2) they are unsupportable in light of the undisputed evidence. Therefore, Court grants State Farm's motion for summary judgment. Nothing in this Order is intended to reflect on the timeliness of the Mezzetti II lawsuit.

Dated: January 4, 2006

04cv3022sjmezzetti

/s/James Ware

JAMES WARE

United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Howard G. Frank howardfrank@hgfranklaw.com

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Stephen P. Ellingson sellingson@hayesdavis.com

4 **Dated: January 4, 2006**

Richard W. Wieking, Clerk

5
6 **By: /s/JWchambers** _____

Melissa Peralta

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